

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)

Implementation of Sections of)
 the Cable Television Consumer)
 Protection and Competition)
 Act)

MM Docket No. 92-266

Rate Regulation)

To: The Commission

ORIGINAL

REPLY COMMENTS OF
CONSORTIUM OF SMALL CABLE SYSTEM OPERATORS

The Consortium of Small Cable System Operators (the "Consortium"),¹ by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits its Reply Comments² in response to the above-captioned Notice of Proposed Rule Making ("NPRM"), which seeks comments on the implementation of the rate regulation provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act" or "Act").³

In their zeal to establish a rate standard that will recover purported "monopoly rents" from wealthy, powerful cable MSOs, many commenters have simply failed to consider the impact of their broad brush proposals on small system operators, and the resultant implications for cable service in rural America. For example, the rate standard suggested by the National Association of Broadcasters ("NAB") would combine cost benchmarking using estimated

¹ Attached hereto as Exhibit 1 is a list of the Consortium's members.

² A copy of these Reply Comments is being served on the FCC's new Small Business Office, for consideration pursuant to the Regulatory Flexibility Act.

³ Pub. L. 102-385, 102 Stat. (1992).

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replacement capital costs for cable systems of different sizes and types, with an individualized assessment of each cable system's actual variable or non-capital costs. NAB Comments at 14,15. While NAB offers various justifications for its approach, the bottom line, as acknowledged by NAB, is that under its formula, a 16 channel basic tier (of a 40 channel system) would range in cost from \$3.48 to \$7.35. NAB Comments at 19.

Applying such ridiculously low rates retroactively, as NAB proposes,⁴ would have a devastating impact on cable operators, particularly small system operators. As explained by the Consortium in its Comments and as expressly recognized by the Commission,⁵ due to the nature of the markets they serve, (less affluent, sparsely populated, higher per capita costs, etc.), small system operators typically operate with slim to nonexistent profit margins. Moreover, most of the Consortium's members, like many small system operators, offer only one tier of service. Basic tier revenues thus constitute their sole income source. In light of these operational and financial restraints, it is no exaggeration to say that artificially restricting basic tier revenues in the manner proposed by NAB would force many, if not most, small system operators out of business.⁶ Such a restructuring of the industry

⁴ NAB Comments at 3.

⁵ NPRM at 63.

⁶ To put matters in perspective, the rate for Southwest Missouri Cable TV, Inc.'s 12 channel basic service was not increased for a period of six years, from 1987 until this past January, when it was raised only 50¢ (from \$10.00 to \$10.50). Even then, the rate was increased only because spiralling programming and other system costs demanded such action. Obviously, an operator with a track record such as Southwest Missouri's should not and cannot be forced to bankrupt itself by lowering its basic rate to meet a wholly unrealistic and anticompetitive standard designed to extract so-called monopoly rents from a few MSO's.

was not an intended consequence of the Cable Act, and runs directly counter to Congress' directive to the Commission to lessen the small system operators burden and thereby ensure the continued viability of cable service in rural areas. Setting rates at the confiscatory levels advocated by the NAB also raises substantial Fifth and Fourteenth Amendment issues.

In order to ensure the continued expansion of cable service into less populated areas and the viability of existing service in such areas, the Consortium once again urges the Commission to exempt small systems from onerous rate regulation requirements.⁷ Small systems should also be exempt from any associated reporting requirements, as they generally do not have the staff personnel an MSO can rely on to meet complex reporting requirements, nor the resources to retool their accounting procedures and hire additional in-house staff or outside professionals.⁸

If small systems are not exempt or otherwise relieved from the significant burdens and added administrative costs of rate regulation, then any standard adopted by the Commission must take into account the significantly higher operational costs and lesser profit potential characteristic of small system operations. The Consortium would urge the Commission to adopt an adjustable benchmark that takes into consideration such variables as system age, subscriber levels, channel capacity, density, demographics of market, etc. The Commission's standard must also account for

⁷ For purposes of the exemption, "small cable system" should be defined as an independently-owned system which has either: (a) no more than 10,000 subscribers; or (b) annual gross revenues of \$7.5 million or less.

⁸ Small system operators very likely could not even meet the reporting requirements associated with NAB's standard.

general compliance costs, which will place a disproportionately greater burden on small system operators given their limited staffs and resources. Moreover, small systems should be allowed to pass through, without prior regulatory review or approval, cost increases attributable to increases in taxes, franchise fees, PEG costs, pole rents, program costs, retransmission consent fees, etc., because such price increases are beyond the operator's control.⁹

The Comments of parties such as NAB demonstrate that a broad brush approach to rate regulation likely will drive the small system operator out of business. More detailed and complex standards would have a similar impact, imposing burdens on small system operators that they simply are not equipped to bear. In order to ensure the continuation of cable service in rural America, the Commission should exempt small systems from disproportionately burdensome rate regulation and any associated reporting requirements.

Respectfully submitted,

**CONSORTIUM OF SMALL CABLE
SYSTEM OPERATORS**

By: 

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February 11, 1993

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⁹ NAB's proposal to discount retransmission consent fees fails to consider the significant impact such expenses will have on the small operators overall costs.

EXHIBIT 1

Atwood Cable Systems, Inc,
B&L Cable Communications, Inc.
Belhaven Cable TV, Inc.
Clear Vu Cable
Curtis Cable T.V. Co., Inc.
Eustis Telephone Exchange
Fairmont Cable TV
Full Circle Communications, Inc.
Horizon Cable TV, Inc.
Midwest Video Electronics, Inc.
Panora Cooperative Cablevision
Pioneer Cable, Inc.
Rural Missouri Cable TV, Inc.
Southwest Missouri Cable TV, Inc.
Western Cabled Systems

CERTIFICATE OF SERVICE

I, Pamela Crocker, a secretary in the law office of Rini & Coran, P.C., hereby certify that I have on this 11th day of February, 1993, sent via hand delivery, a copy of the foregoing Reply Comments to the following:

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

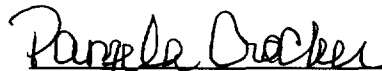
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